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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/613,483

07/03/2003

Alan Edward Palmer

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03/04/2008

UNILEVER INTELLECTUAL PROPERTY GROUP  
700 SYLVAN AVENUE,  
BLDG C2 SOUTH  
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER

MCCORMICK, MELENIE LEE

ART UNIT

PAPER NUMBER

1655

MAIL DATE

DELIVERY MODE

03/04/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/613,483	<b>Applicant(s)</b> PALMER ET AL.	
	<b>Examiner</b> MELENIE MCCORMICK	<b>Art Unit</b> 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/08</u>   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Applicant's remarks with claim amendments submitted 03 January 2008 have been received and considered.

Claims 1-18 are pending and presented for examination in the merits.

Please note that the examiner assigned to this application has changed.

#### ***Information Disclosure Statement***

The Information Disclosure Statement submitted 03 January 2008 has been received and considered.

#### ***Withdrawn Rejections***

The previous claim objection has been withdrawn in view of Applicant's amendments to claims 14-16, which corrected informalities.

The previous rejection of claims 6, 14 and 18 under 35 U.S.C. 112, second paragraph has been withdrawn in view of the amendment of claim 14, which correctly identifies the Markush group in the claim. Applicant's arguments regarding the rejection of claims 6 and 18 as being indefinite due to the term "reducing" are found persuasive because the term "reducing" is understood in the art.

***Maintained Rejection***

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Maxwell et al (US 6,063,432) in view of Cook et al (US 4,451,488), Heidlas et al. (US 6,288,130), Leusner et al. (US 6,468,569) and Nanbu et al. (US 6,074,675) for the reasons set forth in the previous Office Action and for the reasons discussed below.

As previously discussed, the combination of the references cited above render obvious a nutritional bar as instantly claimed.

Applicants argue that clarification is necessary because the previous Office Action characterizes the saccharides maltitol and mannitol as triol polyols. This characterization was an inadvertent error on the part of the previous Examiner. This error, however, does not render the instantly claimed composition novel, as it is clear from the disclosure of Cook et al. that glycerol, which acts as a humectant, is used in a nutrition bar in an amount of about 3% by weight (see e.g. col 3, lines 36-49 and claims 1 and 6). Since it was clearly known at the time of the claimed invention that glycerol is a triol which is useful in nutrition bars as a humectant, a person of ordinary skill in the

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art would have had good reason to include this triol in the composition taught by Maxwell et al.

Applicants further argue that although Maxwell et al. teach possible inclusion of minerals, Maxwell et al. do not teach that a nutrition bar could be advantageously devised having about 10 wt% or more of soy and/or rice protein, at least one transition metal and/or transition metal compound in a substantially water insoluble form at 20°C and about 2 wt% or more of a humectant. Applicants further argue that although Nabu et al. teaches insoluble mineral materials for excellent dispersion stability in a variety of products, including foods, there is no teaching by Nabu et al. of nutrition bars.

Applicants further argue that one would need to use hindsight reasoning to select the recited combination of protein, transition metal and/or compound and humectant to arrive at Applicant's invention. This is not found persuasive. As previously stated, Maxwell et al. teaches that the nutritional bar contains at least 20 weight % soy protein (see e.g. col 2, lines 43-49) and that it may also contain the transition metals iron, zinc, copper, manganese, chromium, and molybdenum. In view of the teaching of Nabu et al. that water-insoluble minerals, including, zinc, copper and iron, are useful in a food composition (see e.g. col 5, lines 44-49 and abstract), a person of ordinary skill in the art would have been motivated to add these particular minerals to the mineral containing composition taught by Maxwell et al. Nabu et al further teach that the minerals are insoluble at 25°C (see e.g. claim 3) and that the water-insoluble minerals have excellent dispersion stability and can be used in a variety of fields, including food. Therefore, a person of ordinary skill in the art would have recognized the benefit of using an

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insoluble transition metal in the food composition taught by Maxwell. A person of ordinary skill in the art would have also reasonably understood that it would be advantageous for the mineral to remain insoluble at room temperature, which would 20°C, since the food product would likely be stored at or around room temperature. This is especially true given the beneficial teaching of Nabu et al. that insoluble minerals used were insoluble at 25°C. Since solubility increases as temperature increases, if these minerals were insoluble at the higher temperature of 25°C, they would have also been insoluble at 20°C.

The rejection is therefore deemed proper and is maintained.

### ***Conclusion***

No claim is allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELENIE MCCORMICK whose telephone number is (571)272-8037. The examiner can normally be reached on M-F 7:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melenie McCormick  
Examiner  
Art Unit 1655

/Patricia Leith/  
Primary Examiner, Art Unit 1655